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Penn-America Insurance Co.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

J. ROBERTA HARRIS,

Plaintiff,

vs.

PENN-AMERICA INSURANCE CO.,

Defendant.

Civil Action No.: 3-12-cv-_____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Penn-America Insurance Co. (“Penn-America”), hereby removes the state court action captioned *J. Roberta Harris v. Penn-America Insurance Co.*, Case No. 3HO-12-00049 CI, pending in the Superior Court for the State of Alaska, Third Judicial District at Homer (“Action”), to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. The grounds for removal are as follows:

THE REMOVED CASE

1. This is a breach of insurance contract action in which the plaintiff, J. Roberta Harris (“Harris”) alleges that Penn-America wrongfully excluded coverage to its insured, Kemper Sackman dba KS Mechanical (“KS Mechanical”) for damage

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1 it caused to Harris' property. (See Plaintiff's Amended Complaint ("Complaint"), ¶
2 5.) Specifically, the Complaint alleges that, after KS Mechanical tendered a claim
3 to Penn-America for defense and indemnification in the underlying action, Penn-
4 America denied indemnification or defense of the claim on the grounds that the
5 language of the policy excluded coverage. (Id. at ¶¶7-8.) Harris obtained an Order
6 for Entry of Default against KS Mechanical on August 9, 2010. (Id. at ¶10.) Harris
7 executed upon all causes of action held by KS Mechanical against Penn-America.
8 (Id. at ¶¶ 13-15). Harris claims that, as a result of this execution sale, she is now
9 the "owner" of KS Mechanical's cause of action and claims against Penn-America.
10 (Id. at ¶15).

12 2. Plaintiff filed her Amended Complaint on April 19, 2012.¹ Penn-
13 America was served with a Copy of the Amended Complaint on August 17, 2012.
14 (See Certificate of Service, Exhibit B.)

16 3. The Action could have been originally filed in this Court pursuant to 28
17 U.S.C. §§ 1332 and 1367, in that there is complete diversity between the parties,
18 and the amount in controversy is in excess of the statutory requirement of \$75,000.

19 **REMOVAL IS APPROPRIATE AND TIMELY**

20 4. Removal is timely because it is made within 30 days of Penn-America
21 receiving service of the Amended Complaint. 28 U.S.C. § 1446(b); *Eyak Native*
22 *Village v. Exxon Corp.*, 25 F.3d 773, 779 (9th Cir. 1994)("[R]emoval was within the
23 30-day period required by section 1446(b) and was timely."); *Vanvelzor v. Central*
24

25 ¹Penn-America was not served with a copy of Plaintiff's original Complaint. Penn-America received a
26 copy of the Second Amended Complaint on September 12, 2012.

1 *Garden & Pet Co.*, 3219534 *1 (D. Alaska August 13, 2010) (notice of removal filed
2 within 30 days from the date defense counsel received the amended complaint was
3 timely under U.S.C. §1446(b)).

4 5. Venue properly lies in the United States District Court for the District
5 of Alaska pursuant to 28 U.S.C. §§ 81A and 1441(a) because Alaska constitutes
6 one judicial district embracing the place where the state court action is pending.

7 6. This is a civil action that falls under the Court's original jurisdiction
8 under 28 U.S.C. §1332 and is one that may be removed to this Court based on
9 diversity of citizenship under 28 U.S.C. §§ 1441 and 1446. Pursuant to 28 U.S.C.
10 § 1441(b), suits that do not arise under federal law are removable "if none of the
11 parties in interest properly-joined and served as defendants is a citizen of the State
12 in which such action is brought."
13

14 7. Complete diversity of citizenship exists between the parties.

15 8. Plaintiff at all relevant times has been a citizen of Homer, Alaska.
16 (Complaint, ¶1, Exhibit A.)

17 9. For purposes of diversity jurisdiction, a corporation is deemed to be a
18 citizen of any State by which it has been incorporated, and of the State where it
19 has its principal place of business. 28 U.S.C. §1332(c)(1); *Montrose Chemical*
20 *Corp. of California v. American Motorists Ins. Co.*, 117 F.3d 1128, 1132 (9th Cir.
21 1997). Penn-America is a company within the Penn-America Group, Inc., a
22 Pennsylvania Corporation, and, thus, is a citizen of Pennsylvania for the purpose of
23 determining diversity. (Complaint, ¶2). Penn-America was not a citizen of the
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1 State of Alaska at the time this case was filed within the meaning of the Acts of
2 Congress relating to the removal of cases. 28 U.S.C. § 1332(c)(1).

3 10. Accordingly, there is complete diversity among the parties, and
4 removal is proper under 28 U.S.C. § 1332(a)(1).

5 **AMOUNT IN CONTROVERSY**

6 11. The amount in controversy requirement of 28 U.S.C. § 1332 is also
7 satisfied in this case. Pursuant to 28 U.S.C. § 1332(a), the amount in controversy
8 in a case where federal jurisdiction is based on diversity of citizenship must exceed
9 \$75,000, exclusive of interest and costs. *Geographic Expeditions, Inc. v. Estate of*
10 *Lhotka ex rel. Lholka*, 599 F.3d 1102, 1106 (9th Cir. 2010)(“A federal court has
11 jurisdiction over the underlying dispute if the suit is between citizens of different
12 states, and the amount in controversy exceeds \$75,000 exclusive of interest and
13 costs”); *Borgen v. United Parcel Services*, 2006 WL 1096628 at *1 (D. Alaska April
14 25, 2006) (case properly removed where the complaint demonstrates that at the
15 time of removal the amount in controversy exceeded \$75,000).

16 12. Here, it is clear from Plaintiff’s Complaint that the amount in
17 controversy is greater than \$75,000, exclusive of interest and costs. In order to
18 bring a civil suit in the Superior Court for the State of Alaska, the amount in
19 controversy must exceed \$100,000. See Rule 45 of the Alaska Rules Governing
20 the Administration of All Courts. Because Plaintiff’s Complaint was filed in the
21 Superior Court for the State of Alaska, and because Plaintiff’s Complaint states she
22 “has been damaged in a sum in excess of \$1 million in accord of proof at trial,
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1 together with allowable costs, fees and interest”, it is clear that Plaintiff is seeking
2 damages in an amount greater than \$100,000 in this case.

3 13. As such, both of the requirements for federal diversity jurisdiction are
4 satisfied and this case is removable by Penn-America.

5 **PAPERS FROM REMOVED ACTION AND OTHER REQUIREMENTS**

6 14. As required by 28 U.S.C. § 1446(a), copies of all process, pleadings
7 and orders in the possession of Penn-America in the removed case are attached
8 hereto as Exhibit A (Summons and Notice to Both Parties of Judicial Assignment
9 and Amended Complaint); Exhibit B (Certificate of Service); and Exhibit C (Second
10 Amended Complaint) and are incorporated herein by this reference.
11

12 15. Pursuant to 28 U.S.C. § 1446(d), Penn-America is filing a written
13 notice of this removal with the Clerk of the Superior Court for the State of Alaska,
14 Third Judicial District at Homer. Copies of this Notice of Removal and the Notice of
15 Filing Notice of Removal to the Clerk of the Superior Court for the State of Alaska,
16 Third Judicial District at Homer are also being served upon Plaintiff’s counsel as
17 required by 28 U.S.C. § 1446(d).
18

19 WHEREFORE, Defendant Penn-America respectfully removes the Action
20 from the Superior Court for the State of Alaska, Third Judicial District at Homer,
21 pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.
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1 DATED at Anchorage, Alaska, this 14th day of September, 2012.

2 CLAPP, PETERSON, TIEMESSEN,
3 THORSNESS & JOHNSON LLC
Attorneys for Defendant

4 By /s/ John B. Thorsness

5 John B. Thorsness, ABA No. 8211154
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13 Attorneys for Defendant Penn-America
14 Insurance Co.

15 **CERTIFICATE OF SERVICE AND FONT**

16 I certify that a copy of this document, in
17 Arial 12.5, was ☒ mailed, $\frac{1}{2}$ faxed,
18 $\frac{1}{2}$ hand delivered on September 14, 2012, to
19 the following:

20 Peter R. Ehrhardt, Esq.
21 Law Office of Peter R. Ehrhardt
22 215 Fidalgo Ave., Suite 201
23 Kenai, AK 99611

24 George R. Lyle, Esq.
25 Guess & Rudd PC
26 510 L Street, Suite 700
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By: /s/ John B. Thorsness

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